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No. 75-1094

In the Supreme Court of the United States

OCTOBER TERM, 1975

THE SUPERIOR OIL COMPANY, PETITIONER

v.

FEDERAL POWER COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE FEDERAL POWER COMMISSION IN OPPOSITION

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 519 F.2d 31. The orders of the Federal Power Commission (Pet. Apps. C, D, and E) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on September 15, 1975. A timely petition for rehearing was denied on November 3, 1975 (Pet. App. B). The petition for a writ of certiorari was filed on February 2, 1976. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1) and Section 19(b) of the Natural Gas Act, 52 Stat. 831, as amended, 15 U.S.C. 717r(b).

QUESTION PRESENTED

Whether the Federal Power Commission has authority to require natural gas companies subject to its

jurisdiction to furnish information concerning their non-jurisdictional sales when the Commission finds that the information is necessary to assist it in regulating interstate sales and transportation of natural gas.

STATEMENT

On January 9, 1975, after a rule-making proceeding, the Federal Power Commission issued Order No. 521, directing certain classes of natural gas companies subject to its jurisdiction to file regular reports containing specified information with respect to "all new non-jurisdictional sales made during the applicable reporting period" (Pet. App. C13). The information to be furnished includes the names of purchasers, the dates and locations of the sales, annual sales volumes, and price (*ibid.*).

The Commission stated that, because of the "interrelationship of the interstate regulated market with the unregulated intrastate market,"[1] it is "vital" and "essential" for the Commission to have "accurate information on the relevant intrastate market" in order effectively to discharge its rate review responsibilities with respect to interstate sales (*id.* at C3, C4). The Commission explained that "[t]he collection of information concerning intrastate and other nonjurisdictional sales by companies subject to the jurisdiction of the Commission will provide a useful sample of the prices charged for new sales of natural gas which are not within the scope of the Commission's jurisdiction" (*id.* at C10) and will help the Commission to determine, for example, "whether prices established by this Commission for sales in interstate commerce are sufficient for interstate pipelines to

[1]The Commission noted, for example, that "the cost of production and transportation of gas now sold in the intrastate market has a direct effect upon the availability of supply and the cost to the consumer of gas for the interstate market" (Pet. App. C5).

acquire new gas supplies in competition with purchasers in intrastate markets" (*id.* at C11).

The Commission's order provided that the reports filed by jurisdictional companies "will be placed in the public file and open to inspection by the public" (*id.* at C6), because "the value to the public of this information far outweighs the claimed pecuniary interest of the producers in confidentiality" (*id.* at C7).

On petitions for review, the court of appeals affirmed the reporting provisions of Order No. 521 but vacated the provisions relating to public disclosure of the reports (Pet. App. A1-A13).[2] The court held, with respect to the reporting requirement, that the Commission's statutory responsibility "to oversee the justness and reasonableness of interstate rates and to assure continued, reliable service" (Pet. App. A7), together with its authority "to conduct investigations to aid in enforcement of the Act" (*ibid.*), justified its directing jurisdictional companies to furnish the data required by Order No. 521. The court (*ibid.*) rejected petitioner's contention that "the FPC's jurisdiction over [it] cannot extend beyond interstate activity" (*ibid.*):

> Interstate rates must be fixed with a clear view of the prices and terms prevailing in the intrastate market. The two markets compete for natural gas which is in short supply. Those regulating the public interstate market must know the private intrastate price structure if their regulations are to function effectively. Moreover, the mere disclosure of details of intrastate sales of natural gas is not regulation of nonjurisdictional sales.

[2]The petition presents no question with respect to the public disclosure provisions of the Commission's order.

ARGUMENT

The fundamental error of the petition is that it equates a demand to jurisdictional companies for *information* concerning their non-jurisdictional activities with an assertion of jurisdiction to *regulate* those activities. The Commission does not, and cannot, regulate a jurisdictional company's intrastate activities, but it by no means follows that the Commission may not seek information with respect to those activities in order more intelligently to regulate the interstate market. As the court of appeals correctly held, "the Commission can require regulated companies to *furnish information* about their unregulatable intrastate activity to facilitate the discharge of the agency's duty" (Pet. App. A6; emphasis added).

That the Commission has not previously exercised its authority to require jurisdictional companies to furnish data concerning non-jurisdictional sales is not "an admission [that] the power never existed" (Pet. 13). As the court of appeals correctly stated, "[t]he present shortage of natural gas is unique," and "[t]he only deduction we make from the fact that this order is novel is that the FPC has not found it imperative to correlate intrastate sales to interstate ratemaking until now" (Pet. App. A9-A10).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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